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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SHANG, ANNAN Q

ART UNIT PAPER NUMBER

2617

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/823,705	Applicant(s) BEREZOWSKI ET AL	
	Examiner Annan Q. Shang	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11,13-58,60-90,92-137,139-169,171-216 and 218-237 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11,13-58,60-90,92-137,139-169,171-216 and 218-237 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/29/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9-11, 13-21, 24-42, 45-58, 60-67, 70-86, 88-90, 92-100, 103-121, 124-136, 139-146, 149-165, 167-169, 171-179, 182-200, 203-215 and 218-225 and 228-237 are rejected under 35 U.S.C. 102(b) as being anticipated by **Hendricks et al (5,798,785)**.

As to claims 1, 29 and 51, note the Hendricks reference discloses figures 1 and 2, discloses terminal for suggesting programs offered on a television program delivery system and further discloses a method: for measuring audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application, comprising:

“receiving an indication of playback of the recorded program” (col. 7, lines 60-67, col. 8, lines 37-52), when a user desires to watch a Movie, Pay-per-view (PPV), VOD, etc., (Movie) “a recorded program” (see fig. 2, Movie, Sport, etc., col. 18, line 29-41 and col. 32, lines 33-40) the user sends a request “indication” to Cable Head end (HE)

208, which receives the request for a playback of the Movie, one or more listings and upcoming program;

“updating audience information for the recorded program,” “program listings” and “upcoming program” (col. 35, line 37-col. 36, line 16), HE-208 updates the user’s profile upon fulfilling the request;

“distributing the audience information to at least one user of an interactive television application; and providing the audience information to the at least one user” (col. 35, lines 48-67 and col. 36, line 17-56), HE-208 ranks the Movies based on the users requests and distributes the rankings “audience information” and suggests a listing of hit Movies and other programs to the user of Set top terminal (STT) 220.

As to claim 2, Hendricks further discloses where the recorded program is audio program (col. 10, lines 53-55 and col. 14, lines 13-20).

As to claim 3, Hendricks further discloses where the recorded program is television program (col. 5, lines 17-28 and lines 47-50).

As to claim 4, Hendricks further discloses where the recorded program is PPV program (col. 2, lines 15-21 and col. 21, lines 5-36).

As to claim 5, Hendricks further discloses where the recorded program is VOD program (col. 32, lines 33-40).

As to claim 6, Hendricks further discloses where the recorded program is NVOD program (col. 32, lines 33-40).

As to claim 7, Hendricks further discloses where the updating audience information comprises updating an audience size assigning weights and ranking the

programs according to the weighted average (col. 32, line 54-col. 33, line 13 and col. 36, line 38-col. 37, line 3).

As to claim 9, Hendricks further discloses updating audience information based on the number of times a user played back the recorded program (col. 35, line 37-col. 36, line 16)

As to claims 10 and 11, Hendricks further discloses receiving an indication for a user interactions "user-identified action," where such action controls how the recorded program is played back (col. 15, lines 21-36, lines 48-col. 13, line 23), executing the user's interactions in response to receiving the request and updating audience information based on the user's interactions comprises actions such as record and play, watched programs, purchased programs, etc., (col. 9, lines 35-48 and col. 14, lines 13-20), note the HE-208 monitors each STT 220 interactions and polls each STT for the gathered user profile.

As to claim 13, Hendricks further discloses where the ITV application is an ITV program guide (col. 15, lines 4-11, lines 20-55).

As to claim 14, Hendricks further discloses providing an interactive indicator that notifies the user when the audience information is available, where the interactive indicator comprises content selected from text, graphics, audio, video and animation (col. 12, lines 54-63 and col. 18, line 55-col. 19, line 27).

As to claim 15, Hendricks further discloses allowing the user to compare programs based on audience information distributed to the user for the programs (col. 35, line 37-col. 36, line 16).

As to claim 16, Hendricks further discloses providing the audience information for a portion of the recorded program (col. 35, line 37-col. 36, line 56)

As to claim 17, Hendricks further discloses where the portion is a scene within the recorded program (col. 12, lines 54-63 and col. 18, line 55-col. 19, line 27)

As to claim 18, Hendricks further discloses providing the audience information for genre of programs (col. 35, line 37-col. 36, line 56).

As to claim 19, Hendricks further discloses providing the audience information for the recorded program based on a time slot (col. 6, line 31-62).

As to claim 20, Hendricks further discloses distributing audience information to a plurality of users and audience information for a subset of plurality of users to the user (col. 18, line 55-col. 19, line 27, col. 33, line 66-col. 34, line 19 and col. 37, line 44-64).

As to claim 21, Hendricks further discloses where the subset of plurality of users is defined on user demographics (col. 6, lines 31-53, col. 33, line 66-col. 34, line 19 and col. 37, line 44-64).

As to claim 24, Hendricks further discloses providing the audience information to the user in program listings display (figs 12a-12b and col. 35, line 37-col. 36, line 56).

As to claim 25, Hendricks further discloses updating the audience information based on a user profile of a user from which the indication was received related to the playback of the recorded program (col. 35, line 37-col. 36, line 56).

As to claim 26-28, Hendricks further discloses calculating audience size for the recorded program, based on weightings "assigned points" to playback information and

accessing a table of grading information for assigning points to playback information
(col. 35, line 37-col. 36, line 56).

Claim 30 is met as previously discussed with respect to claim 2.

Claim 31 is met as previously discussed with respect to claim 3.

Claim 32 is met as previously discussed with respect to claim 4.

Claim 33 is met as previously discussed with respect to claim 5.

Claim 34 is met as previously discussed with respect to claim 6.

Claim 35 is met as previously discussed with respect to claim 14.

Claim 36 is met as previously discussed with respect to claim 15.

Claim 37 is met as previously discussed with respect to claim 16.

Claim 38 is met as previously discussed with respect to claim 17.

Claim 39 is met as previously discussed with respect to claim 18.

Claim 40 is met as previously discussed with respect to claim 19.

Claim 41 is met as previously discussed with respect to claim 20.

Claim 42 is met as previously discussed with respect to claim 21.

Claim 45 is met as previously discussed with respect to claim 24.

Claim 46 is met as previously discussed with respect to claim 25.

Claims 47-49 are met as previously discussed with respect to claims 26-28.

Claim 50 is met as previously discussed with respect to claim 13.

Claim 51 is met as previously discussed with respect to claim 2.

Claim 52 is met as previously discussed with respect to claim 2.

Claim 53 is met as previously discussed with respect to claim 3.

Claim 54 is met as previously discussed with respect to claim 4.

Claim 55 is met as previously discussed with respect to claim 5.

Claim 56 is met as previously discussed with respect to claim 6.

Claim 57 is met as previously discussed with respect to claim 7.

Claim 60 is met as previously discussed with respect to claim 14.

Claim 62 is met as previously discussed with respect to claim 15.

Claim 63 is met as previously discussed with respect to claim 16.

Claim 64 is met as previously discussed with respect to claim 17.

Claim 65 is met as previously discussed with respect to claim 19.

Claim 66 is met as previously discussed with respect to claim 20.

Claim 67 is met as previously discussed with respect to claim 21.

Claim 70 is met as previously discussed with respect to claim 24.

Claim 71 is met as previously discussed with respect to claim 9.

Claim 72 is met as previously discussed with respect to claims 10-11.

Claim 73 is met as previously discussed with respect to claims 10-11.

Claim 74 is met as previously discussed with respect to claims 10-11.

Claim 75 is met as previously discussed with respect to claims 10-11.

Claim 76 is met as previously discussed with respect to claims 10-11.

Claims 77-79 are met as previously discussed with respect to claims 26-28.

As to claims 80, 108, 130, 159, 187 and 209, note the Hendricks reference discloses figures 1 and 2, discloses terminal for suggesting programs offered on a television program delivery system and further discloses a system: for measuring

audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application, comprising:

“a user input device” (Remote Control 900, fig. 3 and col. 5, lines 50-55);

“a display device” (Television ‘TV’ 222)

“means for receiving an indication of playback of the recorded program” (means for receiving Head end ‘HE’ 208, col. 7, lines 60-67, col. 8, lines 37-52), when a user desires to watch a Movie, Pay-per-view (PPV), VOD, etc., (Movie) “a recorded program” (see fig. 2, Movie, Sport, etc., col. 18, line 29-41 and col. 32, lines 33-40) the user sends a request “indication” to Cable Head end (HE) 208, which receives the request for a playback of the Movie, one or more program listings and upcoming program;

“means for updating audience information for the recorded program,” “program listings” and “upcoming program” (means for updating HE-208, col. 35, line 37-col. 36, line 16), HE-208 updates the user’s profile upon fulfilling the request;

“means for distributing the audience information to at least one user of an interactive television application; and providing the audience information to the at least one user” (means for distributing HE-208, col. 35, lines 48-67 and col. 36, line 17-56), HE-208 ranks the Movie based on the users requests and distributes the rankings “audience information” and suggests listings of hit Movies and other programs to the user on TV-222 display.

Claim 81 is met as previously discussed with respect to claim 2.

Claim 82 is met as previously discussed with respect to claim 3.

Claim 83 is met as previously discussed with respect to claim 4.

Claim 84 is met as previously discussed with respect to claim 5.

Claim 85 is met as previously discussed with respect to claim 6.

Claim 86 is met as previously discussed with respect to claim 7.

Claim 88 is met as previously discussed with respect to claim 9.

Claim 89 is met as previously discussed with respect to claim 10.

Claim 90 is met as previously discussed with respect to claim 11.

Claim 92 is met as previously discussed with respect to claim 13.

Claim 93 is met as previously discussed with respect to claim 14.

Claim 94 is met as previously discussed with respect to claim 15.

Claim 95 is met as previously discussed with respect to claim 16.

Claim 96 is met as previously discussed with respect to claim 17.

Claim 97 is met as previously discussed with respect to claim 18.

Claim 98 is met as previously discussed with respect to claim 19.

Claim 99 is met as previously discussed with respect to claim 20.

Claim 100 is met as previously discussed with respect to claim 21.

Claim 103 is met as previously discussed with respect to claim 24.

Claim 104 is met as previously discussed with respect to claim 25.

Claims 105-107 are met as previously discussed with respect to claims 26-28.

Claim 109 is met as previously discussed with respect to claim 2.

Claim 110 is met as previously discussed with respect to claim 3.

Claim 111 is met as previously discussed with respect to claim 4.

Claim 112 is met as previously discussed with respect to claim 5.

Claim 113 is met as previously discussed with respect to claim 6.

Claim 114 is met as previously discussed with respect to claim 14.

Claim 115 is met as previously discussed with respect to claim 15.

Claim 116 is met as previously discussed with respect to claim 16.

Claim 117 is met as previously discussed with respect to claim 17.

Claim 118 is met as previously discussed with respect to claim 18.

Claim 119 is met as previously discussed with respect to claim 19.

Claim 120 is met as previously discussed with respect to claim 20.

Claim 121 is met as previously discussed with respect to claim 21.

Claim 124 is met as previously discussed with respect to claim 24.

Claim 125 is met as previously discussed with respect to claim 25.

Claims 126-28 are met as previously discussed with respect to claims 26-28.

Claim 129 is met as previously discussed with respect to claims 13.

Claim 131 is met as previously discussed with respect to claim 2.

Claim 132 is met as previously discussed with respect to claim 3.

Claim 133 is met as previously discussed with respect to claim 4.

Claim 134 is met as previously discussed with respect to claim 5.

Claim 135 is met as previously discussed with respect to claim 6.

Claim 136 is met as previously discussed with respect to claim 7.

Claim 139 is met as previously discussed with respect to claim 14.

Claim 140 is met as previously discussed with respect to claim 15.

Claim 141 is met as previously discussed with respect to claim 16.

Claim 142 is met as previously discussed with respect to claim 17.

Claim 143 is met as previously discussed with respect to claim 18.

Claim 144 is met as previously discussed with respect to claim 19.

Claim 145 is met as previously discussed with respect to claim 20.

Claim 146 is met as previously discussed with respect to claim 21.

Claim 149 is met as previously discussed with respect to claim 24.

Claim 150 is met as previously discussed with respect to claims 10-11.

Claim 151 is met as previously discussed with respect to claims 10-11.

Claim 152 is met as previously discussed with respect to claims 10-11.

Claim 153 is met as previously discussed with respect to claims 10-11.

Claim 154 is met as previously discussed with respect to claims 10-11.

Claim 155 is met as previously discussed with respect to claim 25.

Claims 156-158 are met as previously discussed with respect to claims 26-28.

Claim 160 is met as previously discussed with respect to claim 2.

Claim 161 is met as previously discussed with respect to claim 3.

Claim 162 is met as previously discussed with respect to claim 4.

Claim 163 is met as previously discussed with respect to claim 5.

Claim 164 is met as previously discussed with respect to claim 6.

Claim 165 is met as previously discussed with respect to claim 7.

Claim 167 is met as previously discussed with respect to claim 9.

Claim 168 is met as previously discussed with respect to claim 10.

Claim 169 is met as previously discussed with respect to claim 11.

Claim 171 is met as previously discussed with respect to claim 13.

Claim 172 is met as previously discussed with respect to claim 14.

Claim 173 is met as previously discussed with respect to claim 15.

Claim 174 is met as previously discussed with respect to claim 16.

Claim 175 is met as previously discussed with respect to claim 17.

Claim 176 is met as previously discussed with respect to claim 18.

Claim 177 is met as previously discussed with respect to claim 19.

Claim 178 is met as previously discussed with respect to claim 20.

Claim 179 is met as previously discussed with respect to claim 21.

Claim 182 is met as previously discussed with respect to claim 24.

Claim 183 is met as previously discussed with respect to claim 25.

Claims 184-186 are met as previously discussed with respect to claims 26-28.

Claim 188 is met as previously discussed with respect to claim 2.

Claim 189 is met as previously discussed with respect to claim 3.

Claim 190 is met as previously discussed with respect to claim 4.

Claim 191 is met as previously discussed with respect to claim 5.

Claim 192 is met as previously discussed with respect to claim 6.

Claim 193 is met as previously discussed with respect to claim 14.

Claim 194 is met as previously discussed with respect to claim 15.

Claim 195 is met as previously discussed with respect to claim 16.

Claim 196 is met as previously discussed with respect to claim 17.

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Claim 197 is met as previously discussed with respect to claim 18.

Claim 198 is met as previously discussed with respect to claim 19.

Claim 199 is met as previously discussed with respect to claim 20.

Claim 200 is met as previously discussed with respect to claim 21.

Claim 203 is met as previously discussed with respect to claim 24.

Claim 204 is met as previously discussed with respect to claim 25.

Claims 205-207 are met as previously discussed with respect to claims 26-28.

Claim 208 is met as previously discussed with respect to claims 13.

Claim 210 is met as previously discussed with respect to claim 2.

Claim 211 is met as previously discussed with respect to claim 3.

Claim 212 is met as previously discussed with respect to claim 4.

Claim 213 is met as previously discussed with respect to claim 5.

Claim 214 is met as previously discussed with respect to claim 6.

Claim 215 is met as previously discussed with respect to claim 7.

Claim 218 is met as previously discussed with respect to claim 14.

Claim 219 is met as previously discussed with respect to claim 15.

Claim 220 is met as previously discussed with respect to claim 16.

Claim 221 is met as previously discussed with respect to claim 17.

Claim 222 is met as previously discussed with respect to claim 18.

Claim 223 is met as previously discussed with respect to claim 19.

Claim 224 is met as previously discussed with respect to claim 20.

Claim 225 is met as previously discussed with respect to claim 21.

Claim 228 is met as previously discussed with respect to claim 24.

Claim 229 is met as previously discussed with respect to claims 10-11.

Claim 230 is met as previously discussed with respect to claims 10-11.

Claim 231 is met as previously discussed with respect to claims 10-11.

Claim 232 is met as previously discussed with respect to claims 10-11.

Claim 233 is met as previously discussed with respect to claims 10-11.

Claim 234 is met as previously discussed with respect to claim 25.

Claims 235-237 are met as previously discussed with respect to claims 26-28.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 58, 87, 137, 166 and 216 rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks et al 'Hendricks-1' (5,798,785)** as applied to claims 1, 51, 80, 130, 159 and 209 above and in view of **Hendricks et al 'Hendricks-2' (6,539,548)**.

As to claims 8, 58, 87, 137, 166 and 216, Hendricks-1 fails to explicitly teach updating market share of the recorded programs.

However, note **Hendricks-2** teaches analyzing rating for television shows to determine the appropriate schedule or program lineup to gain market share and revenue from advertising.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Hendricks-1 into the system to Hendricks-2 to provide interesting programs to users, to gain a higher market share than other competitors.

5. Claims 22-23, 43-44, 68-69, 101-102, 147-148, 201-202 and 226-227 rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks et al (5,798,785)** as applied to claims 1, 29, 51, 80, 108, 130, 159, 187 and 209 above, and in view of **Maissel et al (6,637,029)**.

As to claims 22-23, 43-44, 68-69, 101-102, 147-148, 201-202 and 226-227, Hendricks fails to explicitly teach providing the audience information to the user in flip display or channel change and browsing display of surfing.

However, note **Maissel** reference teaches customizing program schedule information based on a viewer preference profile and further teaches monitoring the users action on flip display or channel change and browsing display of surfing (col. 16, lines 26-36 and col. 17, lines 17-50).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Maissel into the system to Hendricks to

provide users action on channel change and surfing to further obtain a more precise user profile and weightings of programs.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jarrell (6,405,370) discloses television audience monitoring system and method employing tuner interface of set-top converter box.

Cannon (6,286,005) discloses method and apparatus for analyzing data and advertising optimization.

Herz et al (5,758,257) disclose system and method for scheduling broadcast of and access to video programs and other data using customer profiles.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).



Annan Q. Shang.



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